United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Plumbers and Steamfitters Local Union No. 598, AFL-CIO (Rust/W.S.H.) *and* Leslie D. McClure. Case 19-CB-3578

March 31, 1981

DECISION AND ORDER

On November 6, 1980, Administrative Law Judge Roger B. Holmes issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions and a brief in support of the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge, to modify the remedy so that interest will be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977),[3] and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Plumbers and Steamfitters Local Union No. 598, AFL-CIO, Pasco, Washington, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records and data appropriate to verifying compliance with the terms of this Order."

DECISION

ROGER B. HOLMES, Administrative Law Judge: The unfair labor practice charge in this case was filed on August 24, 1979, by Leslie D. McClure, an individual. (See G.C. Exh. 1(a).)

The Regional Director for Region 19 of the National Labor Relations Board, herein called the Board, who was acting on behalf of the General Counsel, issued on October 22, 1979, a complaint and notice of hearing against United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Plumbers and Steamfitters Local Union No. 598, AFL-CIO, herein called the Union or the Respondent. (See G.C. Exh. 1(c).)

The General Counsel's complaint alleges that the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, herein called the Act.

The Respondent filed on October 23, 1979, its initial answer to the General Counsel's complaint. (See G.C. Exh. 1(e).) The Respondent also filed on March 17, 1980, its amended answer to the complaint. (See G.C. Exh. 1(i).)

Because the court reporter did not appear on March 18, 1980, to record the trial proceedings of the hearing, I officially opened the record in Richland, Washington, on that date, and that afternoon I granted the Respondent's motion to continue the hearing until April 22, 1980. Subsequently, at the joint request of the General Counsel and the Respondent, I rescheduled the hearing to June 10, 1980. (See G.C. Exh. 1(j) and 1(k).) Therefore, the hearing resumed on June 10, 1980, in Richland, and it concluded on June 11, 1980. At the request of the counsel for the General Counsel, the time for filing briefs was extended to July 22, 1980. Briefs have been received from the counsel for the General Counsel, the Charging Party, and the attorney for the Respondent.

There are numerous clerical errors in the transcript of the hearing, but those errors appear to be of no real consequence in making a decision on the issues. There was an objection raised by the attorney for the Respondent on the grounds of hearsay to a question asked of Judy McClure by the counsel for the General Counsel. In analyzing the matter under Rule 801 of the Federal Rules of Evidence, I sought to inquire whether the General Counsel was offering such testimony to prove the truth of the matter asserted by an out-of-court declarant. Unfortunately, the court reporter confused "out-of-court" with "out-of-work." Thus, my comments at transcript pages 370 and 371 actually pertained to an "out-of-court declarant." That is just one example of a minor error in the transcript, which may seem confusing to someone reading the record who was not present at the hearing, but it is an error of no real consequence.

On October 7, 1980, I wrote a letter to all of the parties and advised them that the court reporter had inadvertently marked the two tape recording cassettes, which had been received into evidence at the hearing, in such a

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In the absence of exceptions, we need not, nor do we, decide whether the Union could lawfully deny McClure access to its exclusive hiring hall because he refused to pay the working assessment which accrued during the time he was concededly working as a statutory supervisor and was therefore outside the bargaining unit, even if it had been found that he was working "on the contract" at the hourly wage rate set forth therein for superintendents.

[3] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Member Jenkins would award interest on the backpay due based on the formula set forth in his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

manner that it was not possible to listen to the tape recordings. In order to explain and to clarify that matter for the Board in Washington, D.C., I shall hereby receive into evidence as Administrative Law Judge's Exhibits a copy of my letter to the parties and the responses received from them. Transcripts of both tape recordings were admitted into evidence at the hearing.

FINDINGS OF FACT

1. The Employer

Rust/W.S.H., which will generally be referred to herein as the Employer, is a joint venture which has an office and place of business in Wallula, Washington, where it is engaged in the business of the mechanical construction of a pulp plant.

During the 12 months preceding the issuance of the General Counsel's complaint, the Employer had gross sales of goods and services valued in excess of $500,000. During the same time period, the Employer either sold and shipped goods or provided services valued in excess of $50,000 from its facilities within the State of Washington: (1) to customers outside the State of Washington, or (2) to customers within the State of Washington, which customers were engaged in interstate commerce by other than indirect means. In addition, during the same period of time, the Employer also purchased and caused to be transferred and delivered to its facilities within the State of Washington, goods and materials valued in excess of $50,000 which came: (1) directly from sources outside the State of Washington, or (2) from suppliers within the State of Washington, which suppliers had obtained such goods and materials directly from sources outside the State of Washington.

Upon the foregoing facts, and the entire record herein, I find that the Employer has been, at all times material herein, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The unfair labor practice charge named two employers, one of whom was J. A. Jones and the other one was the Employer described above. However, J. A. Jones is not named specifically in the General Counsel's complaint. See Respondent's Exhibit 1, which is a copy of a letter dated August 31, 1979, from the attorney for J. A. Jones Construction Co., and his appearance form.

2. The union

It was admitted in the pleadings that the Respondent has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, and the entire record in this case, I find that fact to be so.

3. Certain facts admitted in the pleadings

Among the facts admitted to be true in the pleadings filed by the parties were those allegations set forth in paragraph 5 of the General Counsel's complaint. Paragraph 5 states as follows:

> (a) At all times material herein, Respondent has had collective bargaining agreements with various employers, including the Employer, wherein Respondent has been recognized as the sole and exclusive collective bargaining representative of various appropriate units of employees working in the plumbing and pipefitting trades.
>
> (b) Pursuant to the agreements described in subparagraph 5(a) above, Respondent has, at all times material herein, operated an exclusive referral system for plumbers and pipefitters from its office located in Pasco, Washington.
>
> (c) By the terms of the agreements described in subparagraphs 5(a) and 5(b) above, various employers, including the Employer, are required to obtain all plumbers and pipefitters exclusively from Respondent's hiring hall, when performing work within the geographical jurisdiction of Respondent.

4. The issues framed by the pleadings

The General Counsel's allegations of conduct violative of Section 8(b)(1)(A) and (2) are set forth in paragraph 6 of his complaint. Paragraph 6 alleges as follows:

> (a) Since on or about August 6, 1979, and continuing through on or about August 27, 1979, Respondent by its agents, Fred Tausch and Ray McKnight, has failed and refused to register for referral and refer to the employers, including the Employer, who are parties to the agreements described in subparagraphs 5(a), 5(b) and 5(c) above, employee McClure.
>
> (b) Respondent engaged in the conduct described in subparagraph 6(a) above, because McClure failed to make working assessment payments to Respondent while McClure worked as a statutory supervisor under the Act, and for reasons other than employee McClure's failure to tender periodic dues or initiation fees uniformly required as a condition of acquiring or retaining membership in Respondent.
>
> (c) Respondent by engaging in the conduct described in subparagraphs 6(a) and 6(b) above violated its exclusive hiring hall procedures for the referral of plumbers and pipefitters to the employers who were parties to the agreements described in subparagraphs 5(a), 5(b) and 5(c), above.

The Respondent's answer to those allegations is set forth in paragraph 2 of the Respondent's amended answer. Paragraph 2 states as follows:

> 2. With regard to Paragraph 6, Respondent responds as follows. On August 22, 1979, Business Representative Fred Tausch and Complaining Party Leslie McClure discussed the payment of dues. Mr. Tausch indicated that the payment of working dues was a requirement of the applicable union Constitution before any dues payment could be received. Mr. McClure did not request to register on the out-of-work list and was not refused an opportunity to register. Rather, the conversation dealt with membership responsibilities. While Mr. McClure apparently understood Mr. Tausch's statements to mean he could not register, that statement was not made

and Mr. McClure was not denied an opportunity to register. Mr. McClure was duly registered the first day he requested registration—August 28, 1979. Except as specifically admitted in this paragraph, Paragraph 6 is denied.

5. The witnesses

In alphabetical order by their last names, the following eight persons appeared as witnesses at the hearing in this proceeding.

Linda Gilmore was an employee of the Respondent at the time of the hearing. She first began working for the Respondent in 1975.

Joyce Goodwin has been an employee of the Respondent since August 1977. At the time that she testified at the hearing, Goodwin was the secretary to the Respondent's business manager, Ray McKnight.

Donald Hodgin has worked for the Respondent as a business representative for more than 1-1/2 years.

Wayne Jernigan has been a member of the Respondent for approximately 4 years. At the time of the hearing, Jernigan worked as a pipefitter foreman for W.S.H. at a project in Wallula, Washington, where Leslie McClure was also working. Jernigan has known McClure for about 5 years.

Pamela Lee has been an employee of the Respondent since August 1973.

Judy McClure is the wife of the Charging Party in this proceeding.

Leslie D. McClure is the Charging Party in this case.

Fred Tausch worked as a business representative of the Respondent for 2 years until October 1979. At the time of the hearing, Tausch was a general foreman for the Jones Energy Division.

6. Credibility resolutions

There are sharp conflicts between the testimony given by the General Counsel's witnesses and by the Respondent's witnesses at the hearing. A decision must be made as to which one of those conflicting versions is credible.

After observing the manner in which all of the witnesses testified at the hearing, and after reviewing their testimony in the transcript, I am persuaded that Leslie McClure is a truthful witness.

Support for portions of his testimony is found in the testimony of his wife, Judy McClure, and also in the testimony of a person whom McClure has known for 5 years, Jernigan. Of course, consideration has been given to the husband-wife relationship in evaluating the testimony given by Judy McClure and to the work-related relationship between McClure and Jernigan in evaluating the testimony given by Jernigan. These are obvious factors to be weighed and considered. Having evaluated their testimony in light of the existence of those relationships, I am persuaded that they also told the truth in this proceeding, and I have also credited their testimony.

Support for portions of McClure's testimony is also found in certain documentary evidence. For example, see General Counsel's Exhibit 7, which is a job offer dated May 19, 1978, from W.B.G. to McClure, and see General Counsel's Exhibit 6, which shows that McClure quit work on July 27, 1979, for W.B.G. and was "suitable for rehire." See, also, General Counsel's Exhibits 8 and 9, which are telephone bills from the United Telephone System to McClure. See also General Counsel's Exhibits 10(a) and (b), which are copies of a mailgram dated August 3, 1979, and sent from Reno, Nevada. See, further, General Counsel's Exhibit 13, which is a letter dated August 7, 1979, from a Board agent to McClure. See also General Counsel's Exhibit 12, which is a pump work order dated August 8, 1979, and an invoice dated August 9, 1979. See, further, General Counsel's Exhibit 15, which is a canceled check signed by Judy McClure, dated September 14, 1979, and made payable to Bleyhl Farm Service.

Support for portions of McClure's testimony is also found in two tape recordings, which he made at the time of the two conversations. See General Counsel's Exhibits 11(a) and (b), which are a tape recording and a transcription of what is audible on that tape recording of a conversation between McClure and Tausch on August 6, 1979, at the union hall. See, further, Charging Party's Exhibits 1 and 2, which are a tape recording and a transcription of that tape recording of a telephone conversation between McClure and a Board agent on August 7, 1979. Significantly, the contents of that taped telephone conversation lend support to McClure's testimony with regard to the timing of that telephone call and the timing of his August 6, 1979, conversation with Tausch at the union hall. For example, see page 2 of Charging Party's Exhibit 2, where the following is shown:

WOMAN: When was this that you went down?
MCCLURE: Friday.
WOMAN: O.K. so that was August 3?
MCCLURE: No, it would be July 27.
WOMAN: O.K.
MCCLURE: The Friday before.

If the telephone call was, in fact, made on Tuesday, August 7, 1979, then it is logical that the Board agent said, "O.K. so that was August 3?" in response to McClure's mention of "Friday." As is clear from the context, McClure made reference to the Friday before that as the date of his first visit to the union hall. If McClure's telephone conversation with the Board agent had been much later in the month of August, it would not be logical for the Board agent to have mentioned August 3 when McClure said "Friday."

Note also page 3 of Charging Party's Exhibit 2 where McClure twice mentions "yesterday" in reference to his second visit to the Respondent's hall:

MCCLURE: And so when I went down there, I went down there and talked to them yesterday, I said "Listen, my, I'm still eligible to go to work for at least 3 weeks and he refused to even put my name on the board because he says "Not until you pay this assessment."

WOMAN: When did you talk to him about this?

MCCLURE: That was yesterday. I tried to go back down there again and go to work and I talked to another business agent and he called me into his office. He said not until you pay the 1-1/2% assess-

ment that you made when you were a superintendent.

An earlier reference to McClure having 3 more weeks to pay his union dues is found on page 2 of Charging Party's Exhibit 2. McClure stated, "Yeah, well I'm just assuming it's three weeks. It'll be the end of the month, whenever that is." Note also the Board agent's remark on page 4 of Charging Party's Exhibit 2: ". . . it is nowhere near the end of the month yet." Those comments support McClure's testimony that he called the Board agent on August 7, 1979, which was about 3 weeks before the end of the month, and August 7, 1979, was "nowhere near the end of the month."

If McClure's conversation with Tausch at the union hall had occurred later in the month of August 1979, and if McClure's telephone conversation with the Board agent had occurred after that, neither the Board agent's comments nor McClure's comments described above would be logical. As pointed out above, those comments tend to support McClure's version of the timing of these events.

Based on his demeanor as a witness and on the foregoing summary of matters lending support to McClure's testimony, I have credited McClure's testimony as being truthful and accurate. I will rely upon his testimony and the credited testimony of Judy McClure and Jernigan throughout this Decision. In addition, I will base many of the findings of fact herein upon documentary evidence.

Acceptance of McClure's testimony as being truthful necessarily means that the conflicting testimony given by other witnesses at the hearing cannot be accepted.

Tausch was the first witness to be called to testify at the hearing. He gave his testimony before it was revealed at the hearing that a tape recording existed of his conversation with McClure at the Respondent's office. (See G.C. Exhs. 11(a) and (b).) The tape recording of that conversation directly contradicts the version given by Tausch on the witness stand. The conflicts between his testimony and the tape recording revealed that his testimony at the hearing was in error. Also in error was the assertion that the conversation with McClure had occurred on August 22, rather than August 6, 1979. In this connection, see Respondent's Exhibit 3 and the notation which allegedly was made on that date. The testimony of McClure, Judy McClure, Jernigan, and documentary evidence are persuasive that the August 22, 1979, date given by Tausch was in error. Under the foregoing circumstances, confidence in the accuracy, and the reliability of his other testimony offered at the hearing, is undermined. Accordingly, I do not credit Tausch's account.

Although I do not consider credibility determinations made by another Administrative Law Judge in another proceeding to be binding on me, I have honored the request by the counsel for the General Counsel to take judicial notice of a Board decision involving the same Respondent where testimony by Tausch was not credited. See *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Plumbers and Steamfitters Local Union 598, AFL-CIO (Columbia Mechanical Contractors Association)*, 250 NLRB 75 (1980). Administrative Law Judge Joan Wieder did not credit certain testimony by Tausch in that case before her, and the Board affirmed her findings. See footnote 1 of the Board's decision.

As explained above, the crediting of McClure's testimony necessarily means that the conflicting or inconsistent accounts given by other witnesses cannot be accepted as accurate and reliable. In these circumstances, I have not credited the accounts given by the four employees of the Respondent who testified at the hearing: Gilmore, Goodwin, Hodgin, and Lee.

7. Certain provisions in two collective-bargaining agreements between the Respondent and Employers engaged in the plumbing and pipefitting industry

Introduced into evidence as General Counsel's Exhibits 2 and 3 were copies of collective-bargaining agreements between the Respondent and certain employers engaged in the plumbing and pipefitting industry.

General Counsel's Exhibit 2 has effective dates from June 1, 1979, through May 31, 1982. See article XXXIX, "Term of Agreement," on page 45 of that exhibit. The entire contract is in evidence, and it may be studied by those persons having a need to do so. However, certain provisions of that agreement are of particular interest in view of the issues raised in this proceeding. They include: article VIII, "Union Security," on pages 5 and 6 of that exhibit. That article provides:

ARTICLE VIII

UNION SECURITY

SECTION 1. The Employer shall require all employees engaged in plumbing and pipefitting work, who are members of Local 598, on the date of execution of this Agreement, to maintain such membership as a condition of employment. The Employer shall require all other employees, either presently on the payroll or future new hires, who are engaged in plumbing and pipefitting work to acquire and maintain membership in Local 598 as a condition of employment on and after the 8th day following the commencement of their employment, or the date of execution of this agreement, whichever is later.

SECTION 2. The Employer shall terminate any employee who is not a member of Local 598 as required by this Article, within forty-eight (48) hours after receiving written notice from Local 598.

SECTION 3. Membership in Local 598 for the purposes of this Article shall mean (1) tendering to Local 598 its initiation fee under non-discriminatory conditions established by Local 598, and (2) tendering to Local 598, on or before the 10th day of each month, the monthly dues established by Local 598, and (3) tendering to Local 598, on or before the 10th day of each month, the working dues (based upon the previous month's employment) established by Local 598.

SECTION 4. The Employer agrees to check off (from wages earned) once each month the hourly working dues required as a condition of employment under this Agreement, and to remit such monies to the Administrator of the Trust Funds as the agent of Local 598 for purposes of this Section. The Employer's obligation under this Section is contingent upon the receipt of a written employee authorization providing for such deduction. The provisions of Article XII are applicable to remittance required by this Section.

Article XII, "Fringe Benefits and Fund Contributions," is found on pages 7 and 8 of that exhibit. Note section 1 of that article which provides:

ARTICLE XII

FRINGE BENEFITS AND FUND CONTRIBUTIONS

SECTION 1. This Agreement recognizes certain trusts and funds as listed below. All Employers shall pay fringe benefits and fund contributions per compensable hour as required by Article XIV hereof.

Local Union 598 Plumbers and Pipefitters Industry Trust Funds

1. L.U. 598 Plumbers and Pipefitters Industry Vacation Fund.

2. L.U. 598 Plumbing and Pipefitting Industry Medical Fund.

3. Plumbers and Pipefitters Industry National Pension Fund.

4. L.U. 598 Plumbing and Pipefitting Industry Journeyman and Apprentice Training Fund.

5. Washington State Plumbing and Pipefitting Industry Pension Fund.

6. Local 598 Working Dues (see Article VIII, union security).

"Wages, Fringe Benefits and Fund Contributions" is the title of article XIV, which is located on pages 10 through 13 of that exhibit. Note in Section 1 of that article that the wages for superintendents under the agreement were ". . . 30% above basic rate inclusive of vacation." The basic hourly wage rate at that time was $14.64 and the vacation amount was $2 an hour. Among other things, section 1 of that article also provided, "*Dues check-off to 598*-1-1/2% basic hourly rate inclusive of vacation, including overtime rate of basic hourly wage rate inclusive of vacation." Section 3 of that article provided, *inter alia*, that the overtime provisions of section 9 applied to superintendents.

Article XVI entitled "Supervision" is found on page 15. Article XXII entitled "National Pension Fund" is found on pages 26 and 27. Article XXXII entitled "The Hiring Hall" is on page 40. Article XXXIV entitled "Registration Requirements" is located on pages 41 and 42. Article XXXV entitled "Dispatch Procedure" is found on pages 42–43. Article XXXVI entitled "Reporting-Termination" is found on page 44. Section 1 of that Article provides:

SECTION 1. On date of termination or severance, the Employer will issue a termination form which will state the reason for termination (i.e., reduction in force, voluntary quit or discharge for cause) and shall indicate on the form whether the employee is eligible for rehire. Applicants reregistering will present the termination slip at the time of reregistration. Applicants will not be offered jobs with Employer if the applicant has received an ineligible for rehire slip from that Employer.

General Counsel's Exhibit 3 had effective dates from June 1, 1976, through May 31, 1979. (See art. XVII entitled "Term of Agreement" at p. 21.) There are many differences between the old contract and the new contract. For example, the basic hourly wage rates and other monetary amounts in article X entitled "Wages, Fringe Benefits and Fund Contributions" at pages 8 through 12 of that exhibit are different. Insofar as this proceeding is concerned, however, no one has pointed out any differences of significance to the issues presented herein, and I find none.

8. The employment of McClure by W.B.G.

McClure has been a member of the Respondent since May 1974. On November 30, 1976, McClure was dispatched by the Union to work as a foreman for the predecessor of W.B.G. McClure worked for that employer, Bovee and Crail, and for W.B.G. at the Hanford Nuclear Reservation, which is located about 50 miles north of Richland, Washington. While McClure worked as a foreman, he worked under the coverage of the collective-bargaining agreement between the Respondent and his employer. The 1-1/2 percent working assessment was withheld from McClure's wages until the time that he said later became a superintendent for W.B.G. In addition to withholding the said working assessment, W.B.G. also made deductions from McClure's wages for the vacation plan, the health and welfare plan, and the pension plan during the time that McClure worked as a foreman. McClure regularly paid his union dues to the Respondent by mail.

While McClure was working as a foreman for W.B.G., he had numerous disagreements with the shop steward on the jobsite. The disagreements pertained to McClure's demanding more work from the employees and also the fact that carpenters had been allowed to build a scaffold. Those disagreements with the shop stewards resulted in McClure's having two or three meetings at the union hall with the Respondent's business manager, Ray McKnight.

About a month or so before McClure became a superintendent for W.B.G., McClure initiated a conversation with Respondent's steward, Ray Mergel, with whom McClure had worked for about 1-1/2 years. McClure asked Mergel if there were any problems with McClure becoming a superintendent at his age. (At the hearing, McClure stated that his date of birth was February 24,

1951.) Mergel expressed his view that McClure's age would be a strike against him. Mergel said that he had been in the trade for 30 or 40 years, and he had not known of anyone that age being a superintendent except for a relative in a small company.

Mergel's opinion was that there might be problems for McClure, and he suggested that it might be better for McClure to be a superintendent in a different area. If McClure was a superintendent in another area, Mergel felt "the past problems that had come up" would not carry over.

McClure inquired if there was any way to settle his earlier problems with the Respondent's business manager, Ray McKnight. Mergel suggested that McClure meet with McKnight. McClure asked Mergel to set up such a meeting.

In April 1978, McClure was verbally offered the job of superintendent by W.B.G. McClure negotiated his own terms and conditions of employment with W.B.G. His negotiations with the employer resulted in a salary of $725 a week, which was the amount of money to be paid to a general foreman under the contract. That amount of money was 20 percent above the journeyman's wage rate set forth in the contract, rather than 30 percent above the journeyman's wage rate as provided for in the contract. McClure gave his opinion, "I was not working under the collective-bargaining agreement. I negotiated my own agreement and that's how I was hired." Introduced into evidence as General Counsel's Exhibit 7 was a copy of the written job offer dated May 19, 1978, from W.B.G. to McClure. McClure worked as a building superintendent for W.B.G. from May 29, 1978, through July 27, 1979.

It was stipulated at the hearing that persons in the foreman and general foreman positions did not have the option to negotiate their own terms and conditions of employment.

As a superintendent, McClure could hire and terminate employees. He also had the authority to process grievances. The highest number of craft employees working under him while he was a superintendent was around 150 employees. The lowest number of such employees was about 50 employees. As the building superintendent, McClure had between five and eight other superintendents working under him. He was the superintendent of all of the craft employees, which included plumbers and pipefitters, electricians, millwrights, ironworkers, carpenters, and laborers.

After McClure became a superintendent for W.B.G., no payroll deductions were made from his salary by W.B.G. He continued to pay his basic union dues by mail to the Respondent, as distinguished from the 1-1/2-percent working assessment which had previously been deducted by his employer from his wages. McClure made his own payments into the Union's health and welfare program, and he made payments to cover his death benefit premiums. He did the foregoing by check sent in the mail.

During his cross-examination by the attorney for the Respondent, McClure was asked: "Did you ever go to Local 598 and say, to anyone representing Local 598, and say (sic) 'I have cut my own deal as a superintendent and want to be removed from the union's hiring hall and just go out on my own?'" McClure's response was, "Not that I know of." McClure acknowledged that he did not tell the Respondent about the kind of agreement which he had negotiated with W.B.G., and that he did not tell the Union that he wanted to remove himself from any obligation under the collective-bargaining agreement. However, McClure pointed out that Mike Cochran had worked as a superintendent for about 6 months for W.B.G., and that Cochran had not paid the 1-1/2-percent assessment during that period of time. By the time of the hearing, McClure stated that Cochran was then working under the collective-bargaining agreement as a superintendent for Rust, and that Cochran was paying the 1-1/2-percent working assessment at that point in time.

About 1-1/2 to 2 months after McClure became a superintendent, McClure met with Business Manager Ray McKnight. The conversation took place in the office of Roy Clouse, who was described as being McClure's boss at that time. McClure expressed his desire to get along with the Respondent in his new position as superintendent. McClure suggested to McKnight that any problems between them be discussed and settled. McClure testified: "Ray said that I had put him in a terrible position, that he had brought me into the local five years before that and he had some problems with me because other members were complaining and that if I wanted to really get in good graces with him and get along that I should go and quit my job as a superintendent."

McKnight offered to send McClure to work as a foreman in Portland, Oregon. McClure responded that Portland was 150 miles from his home, and that he was working only 55 miles from his home at that time. McClure pointed out that he had started out on the job as a regular worker, and that he had worked his way up to his present position. McClure said that McKnight was successful at what McKnight was trying to accomplish. McClure said he was trying to succeed in what he was doing. McClure testified regarding McKnight's reply: "He said, 'I still feel like you need to quit the job because you are too young to be a superintendent. You have been on this job for five years now, four years and I think there are a lot of good pipefitters that have got 30, 40 years experiences that can handle the job a lot better than you can. You have only just got a third of what they have got. So I think that is the only alternative.'" McClure disagreed with McKnight, and he expressed his view that he had the ambition needed to make it, even though he did not have the experience.

McKnight inquired if McClure would like to be an instructor at the school. McClure replied that he would like to do that, but he did not have the time to do so. McKnight said that if McClure decided to be an instructor, for McClure to call him and he would arrange it. McClure said that they made sure that there were no hard feelings in the meeting, and that they tried to work things out.

In November 1978, while McClure was working as a superintendent for W.B.G., he attempted to get a female clerical employee out of the W.B.G. office because of

her failure to fulfill her job duties. The employee refused to leave. W.B.G. gave McClure a written reprimand regarding the incident between McClure and the quality control clerk, but W.B.G. refused to terminate McClure from his job as superintendent. On November 20, 1978, 1,500 members of the Respondent, who were working at the Hanford jobsite, walked off the job because of W.B.G.'s refusal to fire McClure.

Since the time that McClure had become a superintendent for W.B.G., Judy McClure had been sending in insurance premium payments each month by check to the Union. Judy McClure had sent in the December payment, but by January 1979, she had not received a receipt for that payment. Therefore, in January 1979, Judy McClure telephoned the Union.

In the first such telephone conversation, a female told Judy McClure that she did not know anything about it. She told Judy McClure that she would call her back. However, the person at the union hall did not call her back, so about a week later Judy McClure called the Union once again. In the second such telephone conversation she was informed that they had checked into it, but there was a particular person with whom Judy McClure needed to speak for an explanation. She was told that the other person was in a meeting at the time, but would return her call. However, the other person did not call Judy McClure, so she called the Union once again. With regard to the third such telephone conversation Judy McClure testified, "I was informed that they had received the check, but had not cashed it. I asked why hadn't they sent it back or why didn't they cash it, and she said that they were not accepting any more payments from Les because he was working as a superintendent and that they would send the check back."

Either at the end of January or the first of February 1979, the check in question was returned to the McClures uncashed. That was the first time that the Union had rejected one of McClure's checks. No further checks were sent by Judy McClure to the Respondent.

With regard to the dates and times of the telephone calls made by Judy McClure to the Union, the telephone bills were introduced into evidence as General Counsel's Exhibit 14.

Prior to the time that McClure quit his job as a superintendent for W.B.G., McClure had a telephone conversation in early July 1979 with Cochran. McClure testified:

> I told Mr. Cochran that I was quitting my job. I had worked for Mr. Cochran for [f]our years. Mr. Cochran wanted me to go to work for him, and I insisted Mr. Cochran that I, in fact, would not work for him because it was too far for me to drive.
>
> He, at that point, offered me the superintendent's job at general foreman's wages plus a half hour a day of overtime to take over Machine No. 3 over approximately 80 men. I turned his request down.
>
> I said that I was quitting my job because I needed to relax for a little bit and get out of the pressures of the superintendent's job.
>
> I said, "I'm going down to the hall," and I said, "I wouldn't mind going to work for you down there if it's not that far to drive." He said, "Well, I'll tell you what I'll do. I'll make sure that if you go down to the hall, that you are able to work." He said, "I'll make sure." He said, "I know I've got a call in for 20 men now. I'll make sure there is a call in for 40 men. If you want to go to work for me, fine."
>
> So I said, "Well, if there's nothing else available, I do know that I can drive all the way down there, it's an hour-and-a-half drive from my house." I said, "I would go to work if there's nothing else available, unless it's a job that's further away."
>
> He said, "Well, I'd like you to go to work for me, but I can see your point about driving the distance down to Wallula." I said, "That's just how I feel."
>
> So at that point, it was just up in the air what I was going to do.

Before July 27, 1979, McClure also contacted Elmer Podretz of J. A. Jones and told him of McClure's intention to quit work as a superintendent for W.B.G. and his intention to seek work through the union hall.

In July 1979, McClure voluntarily quit his job as a superintendent with W.B.G. A copy of his termination slip from W.B.G., dated July 27, 1979, and showing that McClure had quit on that date was introduced into evidence as General Counsel's Exhibit 6. McClure testified at the hearing that he never gave his termination slip to the Respondent.

9. The conversation at the union hall on Friday, July 27, 1979

The distance between McClure's home in Sunnyside and the Respondent's office in Pasco is approximately 55 to 60 miles. On Friday, July 27, 1979, McClure went to the union hall where he had a conversation with a person who worked there.

McClure took his termination slip with him when he went to the union hall. He informed a lady at the window inside the union hall that he wanted to pay his dues and death benefit premium. She asked what his name was, and then she obtained his card from the files. McClure observed her talking with one of the Respondent's business representatives, Don Hodgin. The lady returned to the window inside the union hall and said, "I am sorry, Mr. McClure, but I cannot accept any dues from you until you have paid 1-1/2-percent assessment of what you have not been paying in."

McClure asked her if the Union was refusing to accept his dues. She advised him that that was what she had been instructed. McClure next asked for a copy of the Union's bylaws, and she explained that she could not furnish him with a copy because the bylaws were being revised at that time.

McClure noticed that a card was stapled to his file, so he asked the lady about it. He inquired why there was a notice on his file from McKnight, and she replied that she did not know who had put it there. McClure said, "Well, it reads 'Do not accept dues from Mr. McClure, Ray McKnight, dated 12/6/78.'" The lady responded

that she did not know anything about it. McClure stated to her, "Apparently they knew that there was a problem with my assessment during that time and why hasn't anybody contacted me or why hasn't anybody said something to me about having a problem if there was a problem? Why wasn't anything said about it?" She again told McClure that she really did not know.

During their conversation, the lady also told McClure that his card file showed that he had been dispatched in November 1976, and that they had no record of his coming back to the union hall with a termination slip. McClure answered, "Well, everybody knew that I was a superintendent." She replied that she did not have anything to do with that. McClure recalled that he did tell her that he had not been working as a pipefitter, but that he had been working as a superintendent for 14 months. McClure became upset during the conversation, and he did not ask on that day to have the Union place his name on the out-of-work list.

McClure did not identify by name the lady with whom he spoke at the Respondent's office. However, he pointed her out in the group of spectators present in the hearing room when he testified on direct examination on the first day of the taking of evidence at the hearing.

10. McClure's initial contacts with the International Union

Following his conversation with the lady at the union hall on July 27, 1979, McClure went to Mike Cochran's house, which is located about 15 miles from the union hall. McClure spoke with Cochran's wife there, and he also telephoned Mike Cochran who was at work in Wallula, Washington. McClure obtained the telephone number of Jimmy McClain from Cochran. (McClain's name is spelled differently at different places in the transcript, but I find that reference is being made to the same person.)

McClure then returned to his own house where he tried twice to contact McClain at the International Union's offices located in Washington, D.C., but each time he heard a recording. He also telephoned Cochran at his house that night to advise him of his problems. The telephone calls are reflected on McClure's telephone bill. (See G.C. Exh. 8.)

McClure and his wife left on a vacation in Oregon and Nevada. From Lincoln, Oregon, on Monday, July 30, 1979, McClure once again telephoned the International Union's offices in Washington, D.C. The telephone call was charged to his home telephone number. (See G.C. Exh. 9.) He spoke with a lady there and told her that he wanted to talk with Jimmy McClain. She gave him another telephone number where McClure might be able to contact him. McClure attempted to contact McClain at that number, but he was not successful.

On Friday, August 3, 1979, while he was still on vacation, McClure telephoned the International Union office, from Reno, Nevada. (See G.C. Exh. 9.) McClure spoke with a man there, but McClure was uncertain at the time of the hearing of the man's correct name. He believed it was Spencer or Spinx. McClure explained his problem to the man who suggested that McClure send a mailgram to Marty Ward so that it would be on Ward's desk on Monday morning. The man also suggested that McClure "give me a couple of days," and then call back.

As a result of the foregoing conversation, McClure prepared the text of a mailgram, and he sent it from Reno to Ward on Friday, August 3, 1979. A copy of that mailgram was introduced into evidence as General Counsel's Exhibit 10.

McClure and his wife returned home from their vacation on Saturday, August 4, 1979.

11. McClure's conversations on Monday, August 6, 1979, prior to going to the union hall

Before going to the union hall on Monday, August 6, 1979, McClure spoke with his wife about his plans to go to the union hall, pay his dues, and make sure that his name was on the out-of-work list. He also advised her that he was going to call Wayne Jernigan and speak with him before he went to the union hall. He further told her that, after he left the union hall, he had to fix a pump at a house in Prosser, Washington, which he owned and rented to other persons.

Also that morning McClure telephoned Jernigan in a long-distance telephone call, and he informed Jernigan of his intention to go to the union hall that morning. (See G.C. Exh. 9.) Jernigan advised McClure that he had to report for jury duty in Prosser that day, so McClure said that he would stop by the courthouse in Prosser and see Jernigan in person, rather than discuss the matter on the telephone.

Later that same morning, McClure did stop at the courthouse in Prosser, and he talked with Jernigan. McClure told him that McClure had some problems, and that he did not know what was going to happen, but he was going there that morning ". . . to get some things squared away and hopefully go to work." McClure said he would try to get back in time to have lunch with Jernigan, if McClure did not get a job, and then McClure would have to work on a pump.

12. The conversations between Tausch and McClure at the union hall on August 6, 1979

McClure entered the Respondent's hall about 12:15 p.m. on Monday, August 6, 1979. McClure first spoke with a person whom he described as being a tall, slender lady with "blondish hair." McClure informed her that he wanted to pay his union dues and his death benefit premium. She asked for his name, and then she went to the files. She appeared to be looking for McClure's file in the place where the other lady had previously located McClure's file on July 27, 1979. Then McClure observed her looking over all of the desks, and finally she obtained a file from a desk near Ray McKnight's office. He saw her start to walk back towards the front, but instead, she went back to Fred Tausch's office. McClure saw them talking, and next they both walked up to the window inside the union hall.

Tausch inquired what McClure's position was and what he wanted. McClure replied that he had been in there last week, and he could not pay his union dues. McClure said he wanted to make sure that he could pay his union dues that day and to put his name on the out-

of-work list. At that point, the lady walked away, and Tausch invited McClure to come back to his office. McClure did so. McClure and Tausch had a further conversation in Tausch's office.

McClure made a tape recording of his conversation in the office with Tausch. He did not inform Tausch that he was doing so. The micro-cassette recording was received into evidence as General Counsel's Exhibit 11(a). (C.P. Exh. 1 is a standard cassette tape recording of G.C. Exh. 11(a) and a subsequent telephone conversation between McClure and a Board agent, which will be described later.) Judy McClure later listened to the tape recording, and she typed a transcript of what she could hear on that recording. The typed version was received into evidence as General Counsel Exhibit 11(b). The tape recording was in McClure's possession until the time of the hearing except for the period of time Judy McClure used the tape recording to type the transcript. McClure first listened to the tape recording on his way home after his conversation with Taush, and McClure subsequently checked the typed version against the tape recording after his wife had completed the transcript, which was later introduced into evidence as General Counsel's Exhibit 11(b). McClure testified that the tape recording accurately reflects what was said between him and Tausch in the office on August 6, 1979, except for some inaudible words.

General Counsel's Exhibit 11(b) reflects the following:

> MCCLURE: I don't agree with that part. You know that I don't feel like I should pay it. Are you saying that I can't go on the board or can't go out till it's paid?
>
> TAUSCH: pause
>
> MCCLURE: Is there a reason for it? Does it say that somewhere in the laws that I can't go to work unless I pay it?
>
> TAUSCH: Well, you have to have your dues paid up before we can send you out. You've got all your other dues paid up—well almost all paid up. But we can't accept any more dues until you pay your assessment.
>
> MCCLURE: Ummm
>
> TAUSCH: [A]ssessments are paid before dues like if there is a $5 assessment for something that the
>
> MCCLURE: Well I believe in paying assessments you know
>
> TAUSCH: That's what the 1-1/2% is—a working assessment.
>
> MCCLURE: Right. I believe in paying a working assessment but if I was working as a farmer out here, would I have to pay it?
>
> TAUSCH: No. You were working at a trade dispatch out of here on November 30, 1976.
>
> MCCLURE: That's true.
>
> TAUSCH: You never notified us when you went into supervision.
>
> MCCLURE: I never notified you?
>
> TAUSCH: The only . . . it shows on your card is November 30, 1976 you were dispatched to Bovee and Crail.
>
> MCCLURE: O.K.
>
> TAUSCH: And you have been out there ever since. You haven't even checked back in. I guess that's what you want to do this morning.
>
> MCCLURE: Right.
>
> TAUSCH: Now you get squared away with that 1-1/2% and maybe the best thing for you to do is to get in and talk to Ray about.
>
> MCCLURE: Talk to Ray (fuzz)
>
> TAUSCH:
>
> MCCLURE: No, no I haven't talked to him I realize that there is a problem with the 1-1/2%. Uh, but as far as putting my name on the out-of-work list I don't feel like there should be a problem with it. Did Ray say that I could not put my name on the out-of-work list?
>
> TAUSCH: No, I'm saying you can't.
>
> MCCLURE: O.K.
>
> TAUSCH: You can quote me as saying that.
>
> MCCLURE: Well that's the same as . . . . yeah I believe you.
>
> TAUSCH: All fines and assessments shall be payable before dues can be accepted as a condition of enjoying membership in Local [U]nion 598.
>
> MCCLURE: Right and however.
>
> TAUSCH: However, that under existing union security clauses in existing collective bargaining agreement no member shall forfeit employment for failure to pay any fines or assessments nor shall any officer or member of Local 598 interfere with contract or other employment of another member for failure. . . to pay any monetary charges of any kind other than initiation fees or periodic dues under such collective bargaining agreements. Paying the 1-1/2% is part of our collective bargaining agreement. That's why you signed on the bottom of the dispatch saying that you agreed to pay that 1-1/2% or that you agreed to let the employer take it out of your check—I forget the exact reading.
>
> MCCLURE: I don't think that they had it at that time.
>
> TAUSCH: '76? I can look up your dispatch.
>
> MCCLURE: No, that's alright.
>
> TAUSCH:
>
> MCCLURE: Well, the hall was aware that I wasn't working as a fitter any more and
>
> TAUSCH: The hall isn't aware of a lot of things going on.
>
> MCCLURE: Sure. But because the company failed to send in a copy of my termination slip . . . maybe I should have came in here and said something.
>
> TAUSCH: Whose responsibility was it to bring it in?
>
> MCCLURE: Yeah . . . that's . . . O.K. uh no problem.
>
> TAUSCH: Get squared away on your dues then you'll get squared away on everything.
>
> MCCLURE: O.K. is the death benefits and the building trades and stuff I can't pay those either then?
>
> TAUSCH: No, not until your 1-1/2% is paid. And I'm not sure, I would have to look up or one of the

girls knows that is out to lunch right now, when your last 1-1/2% did come in or maybe you know. But I don't know the exact date you went out as a superintendent.

McCLURE: 14 months ago

TAUSCH: That's probably when it quit right then.

McCLURE: O.K., that clause has been in there since that time then probably?

TAUSCH: Yeah, these bylaws were the 10th day of February 1977.

McCLURE: O.K.

TAUSCH: That's when this book was out

McCLURE: Oh, I'm sure

TAUSCH: I don't think there is any change there.

McCLURE: O.K., well then what do you want me to do? Talk to Ray then? Is that what you want? When is he going to be back in?

TAUSCH: Probably tomorrow morning. He might be back later today. I don't know when. Are you going to be in town the rest of the day?

McCLURE: No, I doubt it. I have got some work I need to get done.

TAUSCH: I tell you what you can do. Joyce will be back at 1:00—that's his secretary. If you want to, stop back at 1:15. She can tell you when he will be back for sure and maybe he can see you this afternoon.

McCLURE: Uh, Joyce . . . Well I've got to fix a pump and get some water going for these people so

TAUSCH: It's got to be taken care of one way or the other. It's beneficial to you.

McCLURE: Oh, yeah, I realize that that if you don't accept dues that I could lose my book which is, you know, is, you know, beneficial to the hall. (laugh)

TAUSCH: What—for you to lose your book?

McCLURE: Yeah.

TAUSCH: How do you figure that?

McCLURE: Anyway, uh, O.K. so my name can't go on the out-of-work list and I can't sign up at all unless I pay the 1-1/2%.

TAUSCH: Get squared away on your dues.

McCLURE: O.K., why didn't somebody say something to me about this problem, you know, before?

TAUSCH: Beats me.

McCLURE: Because I noticed last week when I came in here there was a note stapled to my files. I see it's gone now. [A] card stapled to it, you know, saying not to accept any dues from Mr. McClure per Ray McKnight 12/6/78 so it was apparent that he knew about it for quite a while. I was just wondering why he hadn't

TAUSCH: That would be for you and him

McCLURE: O.K., thank you very much. Be good.

TAUSCH: We'll try to. See you later.

McCLURE: You bet.

The parties stipulated that if McClure had been eligible to register, and if McClure had registered on August 6, 1979, McClure would have been dispatched to a journeyman pipefitter position for a signatory contractor, including possibly W.S.H.

13. The events on August 6, 1979, after McClure left the union hall

After the conversation with Tausch at the union hall on August 6, 1979, McClure went to Mike Cochran's house where he spoke with Cochran's wife and daughter. McClure also telephoned Cochran from there about the results of his visit to the union hall. He also made a collect call to his own house, and he spoke with his wife. (See G.C. Exh. 9.) McClure advised his wife that he would not be going to work, and that he was on his way home.

Next, McClure stopped by the house in Prosser, which he owned and rented to others. He attempted to fix the water pump at the house, but he was not successful. He then telephoned Bleyhl Farm Service to repair the pump. (See G.C. Exh. 12, pertaining to the work subsequently performed by Bleyhl, and see G.C. Exh. 15, which is a copy of a canceled check written by Judy McClure payable to the order of Bleyhl.)

That evening McClure once again telephoned Cochran at his home, and he told Cochran what had happened that day at the union hall. That was another long-distance telephone call. (See G.C. Exh. 9.)

14. The telephone conversation between the National Labor Relations Board agent and McClure on Tuesday, August 7, 1979

On August 7, 1979, McClure made a long-distance telephone call to the Board's Regional Office in Seattle, Washington. (See G.C. Exh. 9.) McClure was advised that the lady was busy at that moment, and that she would call him back in about 10 minutes.

The Board agent did return McClure's call, and McClure made a tape recording of their telephone conversation. He did not advise the Board agent that their conversation was being recorded. The tape recording of that conversation was introduced into evidence as Charging Party's Exhibit 1. Judy McClure typed a transcript of that tape recording, and the transcript was introduced into evidence as Charging Party's Exhibit 2. The recording of the conversation with the Board agent follows on the tape recording after the conversation between McClure and Tausch at the union hall. The tape recording was in McClure's possession except for the period of time when his wife used the tape cassette to type the transcript. Subsequently, after McClure had filed his unfair labor practice charge, McClure revealed to the counsel for the General Counsel, George I. Hamano, that the tape recording existed. McClure and Hamano also took a transcript of the tape recording to the Board agent, and she read the transcript made from the tape recording of that conversation.

Certain portions of the recording have been referred to previously herein in section 6. The substance of the conversation pertains to the matters which ultimately resulted in McClure's filing of the unfair labor practice charge which gave rise to this proceeding. McClure stated that the recording contains their entire conversa-

tion except that the recording ended when the Board agent asked McClure for the full name of the Union and McClure's name and address in order to mail the charge form to him.

Introduced into evidence as General Counsel's Exhibit 13 was a letter dated August 7, 1979, from Gretchen H. Lumbley, attorney, to McClure. The document is on the letter stationery of Region 19 of the Board. It states:

> I was unable to obtain either the addresses or phone numbers of the two employers. Please locate the addresses and phone numbers and write them in the appropriate spaces on the charge. Then sign and date at the bottom four copies of the charge and return them in the envelope provided.

Subsequently, McClure wrote in the addresses and the telephone numbers of the employers listed on the unfair labor practice charge form. McClure also signed the form, and he entered the date of August 16, 1979. (See G.C. Exh. 1(a).) At the hearing, he explained the delay in mailing the form by saying that he was waiting for the International Union to settle the matter, and to contact him. McClure mailed the charge form back to Region 19 of the Board. Region 19 docketed and served the charge on August 24, 1979.

15. Other events on August 7, 1979

McClure made another long-distance telephone call to the International Union office in Washington, D.C., on August 7, 1979. (See G.C. Exh. 9.) McClure spoke once again with the man with whom he had earlier spoken. McClure inquired as to whether his mailgram had been received. The man replied that he had received it, and that Jimmy McClain would be getting in contact with McClure, and that he would try to settle the situation.

McClure said that he had some forms coming to him from the National Labor Relations Board, and that he was going to file charges unless the International Union did something right away. The man assured McClure that the International Union would try to get the matter settled without McClure's having to file charges against the Union.

At the hearing, McClure related his belief at that point in time that the International Union was working on the situation and that he would have to wait a few days for an answer from the International Union.

The evening of August 7, 1979, McClure telephoned Wayne Jernigan at his home. That also was a long-distance call. (See G.C. Exh. 9.) McClure explained to Jernigan about the problems he had at the union hall.

16. The telephone conversation on Tuesday, August 28, 1979, between McClain and McClure

On Tuesday, August 28, 1979, McClure received a telephone call from Jimmy McClain, who identified himself as being with the International Union. McClain said that he had found McClure's mailgram on his desk, and that he had talked that morning with Ray McKnight. McClain said that he realized there was a problem, and he wanted McClure to enlighten him on the problem.

McClure then related the situation to McClain, who told McClure to go down to the union hall immediately and put his name on the list. McClain said that he had spoken to McKnight, and that there would not be any problem when McClure went there this time. McClure pointed out that there had been a problem previously, but McClain assured him that the matter would be taken care of, and he gave McClure a telephone number where he could be reached if there was still a problem. They then discussed the 1-1/2 percent working assessment, and McClain expressed his personal view that McClure should go ahead and pay it, although he was not aware whether the bylaws required it.

McClure told McClain that he would go to the union hall, talk with McKnight ". . . and get things squared away." McClain told McClure to call him if the Union would not send McClure to work. McClain added, "I want you to go to work today."

17. The events at the union hall on August 28, 1979

McClure arrived at the Respondent's union hall about 11 or 11:30 o'clock on August 28, 1979. He first spoke with the lady with whom he had earlier spoken to on July 27, 1979, at the union hall. Then McClure talked with Tausch. McClure testified:

> Yes, I walked in there and I seen this young lady there and I said, "I came in here to pay my union dues and my death benefit and put my name on the out-of-work list." She says, "Did you take care of your 1 1/2 percent assessment?" And I said, "No, I haven't." She said, "As far as I'm concerned, it still stands the same as it did before." And I said, "Are you saying that you won't accept it?" She said, "No, we'll not accept them until your 1 1/2 percent assessment is paid."
>
> I said, "Well, I was told to come down here by Jimmy McClain this morning and be sure and put my name on the out-of-work list and to go to work." She said, "I'm sorry, but I have not been instructed any other way." And I says, "Well, he told me to give him a call this morning if there was a problem." And I said, "I didn't really want to cause any problem, I'm just doing what I was told." She says, "Well, I don't know what took place this morning." She says, "I wasn't here. My kids were sick," or something with her kids. She had to take them to school or one of them was sick. She said, "I just got here so I really don't know what transpired this morning." But she says, "I will go back to the back and talk to Joyce and find out what's taken place." I said, "O.K."
>
> So she came back with this lady here and Fred Tausch and came up to the window. Fred says, "What do you need, Les?" And I said, "I came in here to specifically put my name on the out-of-work list, pay my dues and death benefits." He said, "Well, I have no problem with you putting your name on the out-of-work list." And I said to him in front of those three or four girls, there was another girl standing there, too, "That's not what you told

me the last time I met with you. You told me the last time that I could not put my name on the list." And Fred said, "You must have been talking to somebody else because I didn't say that."

Then I was kind of upset because of the fact that all of a sudden the situation had changed, and I said, "Well, are you saying that I cannot put my name on the out-of-work list?" He said, "Yes, you can." And so he asked one of the girls to get the card file, or whatever it is, the little form that they use that you sign when you come back in, and she reached over there and she started filling it out. She asked Fred, she said, "What day am I supposed to put down there for termination?" Fred Tausch says, "July 27, 1979." And I spoke up and I said, "No, I don't believe that's true. I terminated as a pipefitter May 28, 1978." And I said, "That's when I stopped paying my working assessment and that's when I was not working for the union hall."

And Fred Tausch insisted that that was the date that was going on the card. He said, "If you don't want to sign the card, your name is not going on the list." And I said, "Well, since you put it that way, I will sign the card, but I'm signing it under protest because I do not agree with the date that's put on the card."

So at that point, they told me, "Come in the next morning and meet with Ray McKnight." And I said, "I've had a couple of meetings with Ray McKnight and he's always been too busy. I drive all the way down from Sunnyside to meet with him and then he would end up wanting to go to lunch, and I'd have to wait for him to come back." And I said I didn't want that to happen again. If he wanted to see me, fine, I'd meet with him, but I didn't want to come down here and wait for two or three hours and then not get to see him and then not go to work and what have you.

Well, the one lady told me, she says, "I assure you that if I set an appointment up at 8 o'clock with Ray McKnight, you will see him at 8 o'clock." So I finally agreed to come in and meet with Ray McKnight the next morning at 8 o'clock. At that point I left.

18. The events at the union hall on Wednesday, August 29, 1979

About 8 a.m. on August 29, 1979, McClure returned to the Respondent's hall. At that time he had a conversation with Ray McKnight. Glenn Hickman was also present during that conversation, and Tausch was called in later for part of the conversation. McClure testified:

> Well, Ray started telling me about the past history of the pipefitters and that he felt like I owed 1-1/2 per cent assessment, and that pipefitters had been doing that for years. And when he was a superintendent, he had always paid it out of his own pocket and all this and that. It went on for a while and he asked me if I had a problem with it, and I said, "Yes, I do have a problem with it." He says, "Well, what is your problem with the 1-1/2 per cent assessment?" I said, "Ray, if you show me anywhere in the paper work that shows that I owe you the 1-1/2 per cent assessment of the forty or fifty thousand dollars I made, then I will pay it. I'll write you a check out for it right now. But if I don't owe it, then I don't feel obligated to pay it."
>
> Well, he tried to show me on paper there, opened up the same phrase that Fred Tausch had read to me, and I said, "You know that's not what it says. It doesn't say that." Finally he agreed that I should feel morally obligated to pay that 1-1/2 per cent assessment. He said it was a union that had let me climb the ladder, and it was a union that did this for me and had done that, and so I was obligated to go ahead and pay them that money whether it said to or not.
>
> And I told him that the only way that I would pay that money was if he set up a meeting with union acclaim and the U.A. and Mr. McKnight, and they sit down together with me and they decided on paper that I did, in fact, owe the 1-1/2 per cent assessment, that I would immediately write them a check out for it. He agreed with that.
>
> And I says, "What about this not going to work for a month now?" I said, "It's been a month that I haven't been working." And I says, "How come I haven't been able to go to work?" He says, "No one kicked you out of work." I said, "Yes, Mr. Tausch said I could not go on the out-of-work list." So he told Glen Hickman to call in Fred Tausch, and at that time Fred Tausch walked in the office. Ray said something to Fred about was there a misunderstanding between me and him on the out-of-work list and stuff, and Fred says, "No, he never asked to go on the out-of-work list, he just wanted to pay his union dues and I told him no." And that was basically all Tausch told Ray. He just told Ray that he felt like I had not even spoken to him at all about the out-of-work list, and that was just strictly my idea. So Ray said, "O.K., you can leave now," and Tausch left.
>
> At that point, Ray says, "Well, listen, Les, I know you've brought up charges with the NLRB. And he said, "I talked to these girls out here this morning, and they told me that you told them that you were going to take a few months vacation." And I said, "Ray, you know that's not true." He said, "The girls said that they would testify in court saying that you said you were going to take a two-month vacation." And I said, "Ray, I've been in construction for ten years, and I've only taken about three or four days off in ten years," and I said, "I've got a family to support and I can't afford to take a two-month vacation. I've got house payments and car payments." And I said, "I plan on taking a few days with my family to Reno," but I said, "I didn't intend on taking a two-month vacation."
>
> He said, "Well, that's the way it is." And I said, "Well, I disagree with you." He said, "Well, are you going to continue with this case now that

you're working?" I said, "Well, I feel like you did me wrong by not putting me to work for this last month." He said, "Well, I'm putting you to work now." I said, "That's not the point." I said, "I sat in meetings with you and the other business agents over grievances and you guys would wobble the whole job or something over half an hour's pay." And I said, "Here you've kept me out of work for a month, and I feel like I'm entitled to some privileges for that."

He said, "Well, you know what's going to happen. Your name is going to be in the newspaper, your name is going to be plastered all over the radio stations just like it was before and all these articles are going to be back out against you in the paper, just like the Shackle Fruit Case," and he says, "You don't want that, do you?" I said, "No, Ray, I don't want any bad publicity and I don't want any problems." But I says, "You're the one that has kept me out of work for a month," and I said, "I wanted to work. I've been at home waiting to go to work."

He says, "Well, if you don't drop this case," he says, "I'm going to assure you that this union's position is to fight you all the way." He says, "I don't care if it costs this union $10,000 or $15,000, I'm going to fight it all the way." And I said, "Well, you know how I am, I feel like I'm going to do what's right." I said, "You've already put me through a lot of hell already," and I says, "I'm just going to go ahead with it." So he walked me up to the window, and he told the girl in the turquoise blouse over there, he says, "He still insists on not paying the 1 1/2 per cent assessment so accept his dues, his death benefits, and put him to work." So at that point I got a dispatch from Fred Tausch and I immediately went to work.

On August 29, 1979, McClure was dispatched by the Union to work for W.S.H. McClure went to work for that employer at 10 a.m. on that date as a journeyman. In September 1979, McClure became a foreman, and in April 1980, McClure became a general foreman. He was still employed by Rust at the time of the hearing.

19. Conclusions

The admission into evidence of the two tape recordings made by McClure has raised issues which sharply divide the parties. As noted earlier, General Counsel's Exhibit 11(a) is a tape recording of a face-to-face conversation between McClure and Tausch. Charging Party's Exhibit 1 is a tape recording of a telephone conversation between McClure and a Board agent. The Charging Party made both tape recordings without disclosing to the other party of the conversation that he was doing so.

The Charging Party offered Charging Party's Exhibit 1 into evidence, and he did not raise any objection to the receipt into evidence of General Counsel's Exhibit 11(a). The counsel for the General Counsel offered General Counsel's Exhibit 11(a) into evidence, and he did object to the receipt into evidence of Charging Party's Exhibit 1 on the grounds of relevance and because it was a tape recording of a conversation with a Board agent. The attorney for the Respondent objected to the receipt into evidence of both tape recordings, and he urges in his brief that both tape recordings be excluded. His position rests on 18 U.S.C. § 2515, "Prohibition of Use as Evidence of Intercepted Wire or Oral Communications." In his brief at page 13, he argues:

> The tapes were part of Mr. McClure's tortious scheme aimed at securing a job dispatch at RUST/W.S.H. to which he was not entitled through the grossly inflated dispatch request put in by a friend (See G.P. Exh. 1, pp. 4–5). That scheme adds the injurious element and places Mr. McClure and his concealed recording outside the exception. As a consequence, the tapes should have been excluded from the hearing.

In analyzing the positions of the parties, it should be noted initially that neither the face-to-face conversation at the union hall on August 6, 1979, nor the telephone conversation the next day with the Board agent involved the making of contract proposals or the negotiating of a collective-bargaining agreement. *Carpenter Sprinkler Corporation*, 238 NLRB 974 (1978).

It is helpful to look for guidance to the Board's decision in *Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO (Southern Illinois Builders Association)*, 236 NLRB 329 (1978). One of the issues in that case pertained to the admissibility of tape recordings of three telephone conversations between the charging party in that case and agents of the respondent in that case. Those recordings were made "without the knowledge or consent of the other party to the conversation . . . ." A tape recording of a face-to-face conversation, as distinguished from a tape recording of a telephone conversation, was not involved in that case. The Board stated, *inter alia* at 330, the following:

> Section 10(b) of the National Labor Relations Act, as amended, provides that Board proceedings shall "so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States . . . ." Therefore, the Board is obligated to look towards Federal law to determine the admissibility of evidence, although the Board is clearly not bound by the strict rules of evidence applicable in the Federal courts.
>
> In *United States* v. *Krol*, 374 F.2d 776 (C.A. 7, 1967), cert. denied 389 U.S. 835, the Seventh Circuit Court of Appeals considered the same Illinois statute and the same argument as made by the Respondent in the present case. The court held that neither the existence of the Illinois statute nor its construction as applied to a state prosecution . . . require a reappraisal of the federal rule of evidence . . . that federal and not state law furnishes the

standard governing admissibility of evidence in a federal court."[3]

Similarly, the Ninth Circuit Court of Appeals in *United States* v. *Keen*, 508 F.2d 986 (C.A. 9, 1974), cert. denied 421 U.S. 929, considered a Washington State statute which was very similar to the Illinois statute in the present case. The court held "that where no constitutional right has been abused the admissibility of evidence is governed by common law principles, not by local statute . . . . Therefore, wiretap evidence obtained in violation of neither the Constitution nor federal law is admissible in federal courts, even though obtained in violation of state law."[4]

The Federal wiretapping statute is found in 18 U.S.C.A. § 2510, *et seq.* (1968), Wire Interception and Interception of Oral Communications. According to 18 U.S.C.A. § 2511(2)(d), the following persons are exempt from coverage by that statute:

> It shall not be unlawful under this chapter for a person *not acting under color of law* to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act. [Emphasis supplied.]

The District Court for the Northern District of Illinois had occasion to interpret this section of the statute in *Stamatiou* v. *United States Gypsum Company*, 400 F.Supp. 431 (N.D. Ill., 1975), affd. 534 F.2d 330 (C.A. 7, 1976). The plaintiff therein asserted that telephone conversations which were recorded without his knowledge by the defendant were inadmissible because the defendant's actions violated Illinois law as well as Federal law, inasmuch as the defendant failed to qualify for the exemption under 18 U.S.C.A. § 2511(2)(d). The court concluded that § 2511(2)(d) "does not proscribe a party to a telephone conversation from recording the conversation or publishing it without the consent of the other party."[5]

Therefore, since Federal law does not proscribe the admissibility into evidence of telephone conversations which are tape-recorded by a private party without the knowledge or consent of the other party to the conversation, we shall follow the Federal law and affirm the Administrative Law Judge's admission into evidence and reliance upon the tape-recorded conversations in the present case.

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[3] *United States* v. *Krol*, *supra* at 778. See also *Rathbun* v. *United States*, 355 U.S. 107 (1957), cited in *United States* v. *Martin*, 372 F.2d 63 (C.A. 7, 1967), cert. denied 387 U.S. 91.

[4] *United States* v. *Keen*, *supra* at 989.

[5] *Stamatiou* v. *United States Gypsum Company*, *supra* at 436. In fn. 3, the court rejected the plaintiff's additional assertion that the defendant was not exempted by § 2511(2)(d) because it intercepted the telephone conversations for the purpose of violating the Illinois Eavesdropping Statute. According to the court, "[A] fair reading of the Statute . . . requires a construction that the defendants would be culpable only if the illegal act was something other than recording the conversations." See also *Meredith* v. *Gavin*, 446 F.2d 794 (C.A. 8, 1971); *Smith* v. *Wunker*, 356 F.Supp. 44 (S.D. Ohio, 1972), affd. *Smith* v. *Cincinnatti Post & Times-Star*, 475 F.2d 740 (C.A. 6, 1973).

In enforcing the Board's order in the foregoing case, the Court of Appeals for the Seventh Circuit held in *N.L.R.B.* v. *Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO*, 606 F.2d 189, 192 (7th Cir. 1979):

> It is settled that federal, not state law governs admission of evidence in federal proceedings . . . . We see no reason to apply a different rule in federal administrative proceedings in which federal law supplies the rule of decision.

One of the issues in *East Belden Corporation*, 239 NLRB 776 (1978), pertained to the admissibility of a tape recording secretly made by an employee at a meeting held by the respondent employer in that case. Administrative Law Judge Jerrold H. Shapiro admitted the tape recording and a transcription of the recording because he found that the employee had not recorded the meeting in violation of the Constitution or Federal law. (See especially the Administrative Law Judge's decision at 782.) The Board affirmed the rulings, findings, and conclusions of the Administrative Law Judge in that case.

With the foregoing decisions in mind, I conclude that 18 U.S.C. § 2511(2)(d) is applicable here. (Note that the section has been quoted above in the Board's decision in *Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, supra.*)

With regard to the face-to-face conversation between McClure and Tausch on August 6, 1979, at the union hall, I conclude that McClure was seeking to pay his union dues and to register on the Respondent's out-of-work list for referral to work. In my view of the circumstances, his recording of that conversation was not ". . . for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act."

I am not unmindful of the fact that Cochran had earlier stated that he would increase from 20 to 40 the number of people he would request for referral to work from the union hall. Nevertheless, it has not been established in this proceeding why it would be a "tortious act" or an "injurious act" against the Respondent, if the Respondent would be able to refer 40 persons for work rather than only 20 persons. Moreover, the idea of increasing the number of persons for referral to work was Cochran's idea, rather than McClure's idea. McClure had made it clear to Cochran that McClure would only go to work for Cochran if nothing else was available, or if the available jobs were even further distance to drive from his house. See section 8 herein and McClure's statement to Cochran:

> So I said, "Well, if there's nothing else available, I do know that I can drive all the way down there, it's an hour-and-a-half drive from my house." I said, "I would go to work if there's nothing else available, unless it's a job that's further away."

Here the injured person at the August 6, 1979, conversation between McClure and Tausch was not the Respondent, but instead the person who was truly injured by the conversation was McClure. I conclude that General Counsel's Exhibits 11(a) and (b) were properly admitted into evidence.

With regard to the telephone conversation between McClure and the Board agent on August 7, 1979, I conclude again that 18 U.S.C. § 2511(2)(d) is also applicable. In that conversation McClure was attempting to exercise his rights under the National Labor Relations Act to file an unfair labor practice charge. In my view of those circumstances, his tape recording of that telephone conversation was not ". . . for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act."

As to the General Counsel's objections, the relevance of the tape recording contents has been pointed out in section 6 herein, and I find that Section 102.118 of the Board's Rules and Regulations is not applicable to this Exhibit. I conclude that Charging Party's Exhibits 1 and 2 were properly admitted into evidence.

Turning now to the issues framed by the pleadings, it is helpful to review the Board's decision in *Bricklayers' and Stonemasons' International Union, Local No. 8, B.M. & P.I.U. of America (California Conference of Mason Contractor Associations, Inc.)*, 235 NLRB 1001 (1978). Administrative Law Judge Richard D. Taplitz, whose rulings, findings, and conclusions in that case were adopted by the Board, stated at 1005:

> An exclusive hiring hall gives a great deal of authority over the hiring process to a union, but such authority is not in itself violative of the Act.[7] However, under such a hiring hall system a union cannot lawfully refuse to refer an applicant because of union considerations unless that refusal is based on a valid union-security clause.[8] A union may lawfully refuse to refer an applicant in a situation where that union could, pursuant to a lawful union-security clause, require immediate discharge of that employee for failure to pay dues under a contract governing his employment,[9] but the applicant cannot be required to pay back dues for a period when dues were not validly required as a condition of employment.[10] Referral cannot lawfully be refused because an applicant is not a member of or current in his dues or fines with a sister local of the same International as the referring union.[11] Where a union refuses to register or refer an applicant because of improper union considerations, the General Counsel need not prove that jobs were available at the time of the request for referral.[12]

[7] *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Los Angeles-Seattle Motor Express]* v. *N.L.R.B.*, 365 U.S. 667 (1961).

[8] *Seafarers International Union of North America, Atlantic, Gulf, Lakes & Inland Waters District, AFL-CIO (Isthmian Lines, Inc.)*, 202 NLRB 657 (1973), enfd. 496 F.2d 1363 (C.A. 5, 1974). In addition, referral may be conditioned on the payment of a reasonable nondiscriminatory hiring hall fee. *Boston Cement Masons and Asphalt Layers Union No. 534 (Duron Maguire Eastern Corp.)*, 216 NLRB 568 (1975), remanded 526 F.2d 1189 (C.A. 1). However, there is no contention in this case that Waters failed to pay any "dobie" fees required of him.

[9] *Mayfair Coat & Suit Co.*, 140 NLRB 1333 (1963).

[10] Cf. *Fishermen & Allied Workers' Union, Local 33, International Longshoremen's and Warehousemen's Union (S. G. Guiseppe Fishing, Inc.)*, 180 NLRB 851 (1970), enfd. 448 F.2d 255 (C.A. 9, 1971); *Bricklayers', etc., Local No. 11 (Rochester Floors, Inc.)*, 221 NLRB 133 (1975).

[11] Cf. *International Brotherhood of Electrical Workers, AFL-CIO, Local 648 (Foothill Electrical Corporation)*, 182 NLRB 66 (1970), enfd. 440 F.2d 1184 (C.A. 6, 1971); *International Brotherhood of Electrical Workers, AFL-CIO, Local 82 (National Electrical Contractors Association, Dayton, Ohio Chapter)*, 182 NLRB 59 (1970), enfd. 440 F.2d 1184 (C.A. 6, 1971); *Local 1437, Carpenters (Associated General Contractors of California, Inc., et al.)*, 210 NLRB 359 (1974).

[12] *Utility and Industrial Construction Company*, 214 NLRB 1053 (1974), and cases cited therein. In the *Utility and Industrial Construction Company* case, the Board held [at 1053]:

> The Administrative Law Judge reasoned that, because the Respondent Company never again requested any employees from the Respondent Union's referral system, the violation was merely a theoretical one and dismissed the allegations of the complaint in regard thereto. This conclusion must be rejected. We have consistently held that to establish a violation, it is unnecessary to show that jobs were available at the time of the request for referral . . . . The stated reason for the Union's refusal to register and refer was nonmembership. Hence, we find that by refusing . . . to register and refer [the applicant], the Respondent Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act.

Among the cases cited by the attorney for the Respondent is the Board's decision in *Mayfair Coat & Suit Co.*, which was referred to in footnote 9 of Administrative Law Judge Taplitz' Decision, quoted above. The Board had occasion to comment on its decision in *Mayfair Coat & Suit Co.*, in the Board's decision in *Millwright and Machinery Erectors Local Union No. 740, District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Tallman Constructors, A Joint Venture)*, 238 NLRB 159, 160 (1978), where the Board said:

> In further support of his conclusion, the Administrative Law Judge relied on *Mayfair Coat & Suit Co.*, 140 NLRB 1333 (1963). In that case, an employee who previously had enjoyed a 30-day grace period with one employer in a multiemployer bargaining unit subsequently was denied referral through the union's exclusive hiring hall to another employer within the same bargaining unit because of his delinquency in payment of a portion of his initiation fee. Thus, unlike the situation in the instant case, which does not involve a multiemployer bargaining unit, the employee in *Mayfair* had failed to meet his union-security obligations in the same

> bargaining unit during his previous employment despite the fact that he had been afforded a grace period.

In distinguishing the *Mayfair Coat & Suit Co.* case the Board stated in the *Millwright & Machinery Erectors Local Union No. 740* case, 238 NLRB at 160–161:

> Thus, it is well settled that a union's demand for the payment of back dues which arose during a period when there was no contractual obligation to maintain membership in the union or during a period when the employee was not employed in the bargaining unit cannot lawfully be imposed as a condition of employment even under a valid union-security agreement.[4]

[4] See, e.g., *William Blackwell, d/b/a Carolina Drywall Company*, 204 NLRB 1091, 1094–95 (1973); *International Union of Operating Engineers, Local No. 139 and its Agent Leroy Fitzsimons (T. J. Butters Construction)*, 198 NLRB 1195 (1972); *Teamsters Local Union No. 174, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent (Consolidated Fruit and Produce Company)*, 149 NLRB 1570, 1573 (1964).

I find that the *Mayfair Coat & Suit Co.* case is also distinguishable here. McClure negotiated in May 1978 his own wages and his other terms and conditions of employment when he became a superintendent with W.B.G. His salary was different from what was provided for, if he had been working under the terms of the contract, and the payroll deductions previously made while he did work under the contract ceased when McClure became a superintendent. It was established that superintendents did enjoy the prerogative of negotiating their own wages and other terms and conditions of employment, whereas foremen and general foremen did not have that privilege. McClure took advantage of that privilege and negotiated his own terms as a superintendent for his employer.

I conclude, therefore, that McClure was not working under the coverage of the Respondent's collective-bargaining agreement after McClure became a superintendent for W.B.G. Because McClure was not working under the coverage of the contract, then he was not obligated to pay the 1-1/2-percent working assessment. Because McClure was not obligated to pay the 1-1/2-percent working assessment, then the Respondent, as shown by the case precedents cited above, was not free to deny McClure the use of its exclusive hiring hall by failing and refusing to permit McClure to register on the out-of-work list until he had paid the 1-1/2-percent working assessment, which he did not owe. By not having his name on the Respondent's out-of-work list, McClure was not in a position for referral to work for signatory employers who utilized the Respondent's exclusive hiring hall.

Without repeating here the findings of fact as set forth in section 8 herein, the evidence shows that the Respondent's agents knew about McClure's promotion to the superintendent's position. There were conversations with the shop steward and with the business manager with regard to the problems they perceived in his assuming the superintendent's position. Then there was the November 1978 incident involving the clerical employee. Thus, the Respondent was well aware of the fact that McClure had been elevated to the superintendent's position. The cessation of all of the deductions from McClure's wages and the cessation of the transmittal of such deductions to the union, after McClure became a superintendent, is one fact from which it may be inferred that the Union would have knowledge that McClure was no longer working under the contract coverage. The Respondent also became aware McClure was no longer paying the 1-1/2-percent working assessment, yet the Respondent acquiesced and made no effort to collect such an assessment until McClure sought to register on the Respondent's out-of-work list. Note also the memo attached to McClure's file at the union office from which it may be inferred that at least as early as December 1978, if not before, the Respondent had such knowledge. Note also the union clerk's conversations with Judy McClure in January 1979. (With regard to the foregoing, see sec. 8 herein.)

McClure was not permitted use of the Respondent's hiring hall from August 6, until August 29, 1979. On the latter date, McClure was dispatched by the Union to work, but that dispatch took place only after McClure's filing of an unfair labor practice charge against the Respondent and McClure's several contacts with the International Union office. McClure's failure to present to the Union his termination slip dated July 27, 1979, from W.B.G did not prevent the Union from dispatching McClure on August 29, 1979. Instead, that matter was simply verified by telephone. If the Respondent did not insist on August 29, 1979, that McClure first present to the Respondent his termination slip from W.B.G, then it is not logical that the Respondent would have insisted that the termination slip be presented on August 6, 1979. Instead, the conversation between McClure and Tausch on August 6, 1979, makes it clear that it was McClure's payment of the 1-1/2-percent working assessment which was necessary before McClure's name could be placed on the Respondent's out-of-work list.

Having considered all of the foregoing and the entire record, I conclude that the General Counsel has established by a preponderance of the evidence that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (2) as alleged in the General Counsel's complaint.

CONCLUSIONS OF LAW

1. Rust/W.S.H. is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act by failing and refusing from August 6, to August 29, 1979, to register Leslie D. McClure for referral at the Union's exclusive hiring hall, and by failing and refusing from August 6 to August 29, 1979, to refer Leslie D. McClure to work for employers who were signatory to agreements with the Union and who utilized the Union's exclusive hiring hall, for reasons other than a failure to

tender periodic dues or initiation fees uniformly required as a condition of acquiring or retaining membership in the union.

4. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Since I have found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, I shall recommend to the Board that the Respondent be ordered to cease and desist from engaging in those unfair labor practices.

I shall also recommend to the Board that the Respondent take certain affirmative action in order to effectuate the policies of the Act. Such affirmative action will include an order to make whole Leslie D. McClure for any loss of wages and benefits which have resulted from the Respondent's unfair labor practices. In addition, appropriate interest is to be paid by the Respondent to McClure. Such interest is to be computed in accordance with the Board's decisions in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). See also the Board's decision in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

As indicated previously in this Decision, I have taken judicial notice of the Board's decision in *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Plumbers and Steamfitters Local Union 598, AFL-CIO (Columbia Mechanical Contractors Association)*, 250 NLRB 75. The Board's decision in that case issued on June 24, 1980. However, the unfair labor practices found therein had occurred in 1978. Considering the prior decision and the unfair labor practices found in this case, I conclude that those unfair labor practices, while serious violations of the Act, do not place the Respondent in the category of "repeat offenders and egregious violators of the Act" as described in the Board's decision in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). Therefore I shall recommend to the Board a narrowly drafted cease-and-desist order, rather than a broadly drafted injunctive order.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[1]

The Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Plumbers and Steamfitters Local Union No. 598, AFL-CIO, Pasco, Washington, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Failing and refusing to register Leslie D. McClure for referral at the Union's exclusive hiring hall and failing and refusing to refer Leslie D. McClure to work for employers, who are signatory to agreements with the union and who utilize the Union's exclusive hiring hall, for reasons other than a failure to tender periodic dues or initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary in order to effectuate the policies of the Act:

(a) Make whole Leslie D. McClure for any loss of wages and benefits which have resulted from the Respondent's unfair labor practices and pay to McClure appropriate interest, as set forth in the section of this Decision entitled "The Remedy."

(b) Post at its offices and hiring hall copies of the attached notice which is marked as an "Appendix."[2] The Regional Director for Region 19 will provide copies of the notice to the Respondent. After the Respondent's representative has signed those copies, the Respondent shall post those notices immediately after receiving them. The Respondent shall maintain such notices for 60 consecutive days after they have been posted in conspicuous places, including all of the places where the Respondent customarily posts notices to its members. The Respondent shall also take reasonable steps to insure that the notices are not altered, defaced, or covered by any other material during the posting period.

(c) Sign and return to the Regional Director for Region 19 sufficient copies of the attached notice marked as an "Appendix" for posting by Rust/W.S.H., if that employer is willing to do so, in conspicuous places, including all of the places where the employer customarily posts notices to its employees.

(d) Within 20 days from the date of this Order the Respondent shall write a letter to the Regional Director for Region 19 and tell him what the Respondent has done to comply with this Order.

[1] In the event that no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Board's Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board," shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fail and refuse to register Leslie D. McClure for referral at our exclusive hiring hall, and WE WILL NOT fail and refuse to refer Leslie D. McClure to work for employers, who are signatory to agreements with our union and who utilize our exclusive hiring hall, for reasons other than a failure

to tender periodic dues or initiation fees uniformly required as a condition of acquiring or retaining membership in our union.

WE WILL NOT in any like or related manner restrain or coerce our members or employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL make whole Leslie D. McClure for any loss of wages and benefits which resulted from our actions, and WE WILL pay appropriate interest to him on such amounts of money.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 598, AFL-CIO